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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA

No. CR 08-280 (KI)

v.

**GOVERNMENT'S SENTENCING
MEMORANDUM**

MARTY RAY FOLWICK,

(Sentencing: 10:30 am, December 8, 2008)

Defendant.

The United States of America, by and through undersigned counsel, submits this sentencing memorandum. Specifically, the Government supports the Presentence Report (PSR) recommendation of a sentence of 63 months based on an advisory guideline offense level 26 and no criminal history. The Government also recommends that defendant be ordered to make restitution to bank lender victims who have submitted loss claims to Probation.

Discussion

On October 2, 2008, defendant pled guilty to counts 1 - 4 of a 15 count indictment (PSR ¶ 1). All counts relate to a single real estate transaction through which defendant executed a scheme to defraud SunTrust Bank by causing the submission of a materially false loan application. Defendant pled guilty to charges of bank fraud, wire fraud and money laundering arising out of this transaction (PSR ¶¶ 1 - 3).

The PSR accurately describes the overall scheme to defraud various lenders (PSR ¶¶ 12 - 26). Defendant has not filed any exceptions to the factual scheme set out in the draft PSR and embodied in the final PSR. This rendition of the facts notes that the defendant's scheme involved 21 straw purchases who, with defendant's assistance, submitted fraudulent real estate loan applications to 32 victim banks (PSR ¶¶ 28, 29).

The PSR correctly concludes that because of the numerous properties and "complex nature of determining the actual and intended losses", an appropriate alternative measure is the gain derived from the scheme (PSR ¶ 27). In this case, the PSR states that defendant received approximately \$880,000.00 (PSR ¶ 27), which adds 14 levels to the base Guideline Range. Defendant does not contest this measure of gain.

The PSR correctly calculates an offense level of 26 (PSR ¶¶ 32-44). This is consistent with the calculation in the Plea Agreement.

The Government requests that restitution be ordered for all victim lenders who submit loss statements. Attached as Exhibit 1 is a statement of loss from Washington Mutual of \$546,514.25. If the Government receives other loss statements before sentencing on December 8, 2008, they will be submitted to the court.

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In conclusion, the Government respectfully requests that defendant be ordered to serve a 63 months sentence, a 3 year term of supervised release, and to make full restitution to victim banks which have submitted loss statements.

Dated this 1st day of December, 2008.

Respectfully Submitted,
KARIN J. IMMERGUT
United States Attorney

s/ Allan M. Garten
ALLAN M. GARTEN
Assistant United States Attorney
Senior Litigation Counsel